

RE: OH-007 RD

King, Christopher (Law) <CKing@law.nyc.gov>

Thu 12/2/2021 11:38 AM

To: Carr, Brian <Carr.Brian@epa.gov>

Hi Brian:

In response to your question below, the slide presentation, including the notes on Slide 2, were prepared by DEP's consulting team on the Tunnel Evaluation Project, which included members of the firms Hazen and Sawyer and Brown and Caldwell, and was headed by Robert Smith of Hazen and Sawyer.

Regards,

CHRISTOPHER GENE KING | SENIOR COUNSEL | ENVIRONMENTAL LAW

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From: Carr, Brian <Carr.Brian@epa.gov>

Sent: Tuesday, November 16, 2021 3:55 PM

To: King, Christopher (Law) <CKing@law.nyc.gov>

Subject: [EXTERNAL] Re: OH-007 RD

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Forward suspect email to phish@cyber.nyc.gov as an attachment (Click the More button, then forward as attachment).

Chris,

I hope you are well.

A review of our prior email correspondence related to my April 7, 2021 email to you, set forth below at the start of this email string, indicates that an answer to one of the questions appears to be still outstanding.

The question, which is underlined here and highlighted in the original email further below, is:

In support of the tunnel proposal, DEP made various submissions and presentations to EPA regarding CERCLA equivalency and the potential non-CERCLA infrastructure benefits of the tunnel (e.g., replacing aging infrastructure, increasing drainage control, increasing WWTP capacity, preventing sewer backups, and supporting resiliency). See, e.g., the October 1, 2018 letter from the Deputy Commissioner, and Attachment 1, Response to EPA Questions.

On September 10, 2018, DEP gave a presentation to EPA entitled "Gowanus Tunnel EPA Meeting 10Sept2018.pptx." Could you please identify the author(s) of the Notes on Slide 2 of that presentation?

An excerpted form of that presentation with slides 1 and 2 is attached for your reference.

Thank you for your anticipated cooperation.

Brian E. Carr

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carr.brian@epa.gov

From: King, Christopher (Law) <CKing@law.nyc.gov>

Sent: Monday, August 23, 2021 12:33 PM

To: Carr, Brian <Carr.Brian@epa.gov>

Subject: RE: OH-007 RD

Hi Brian:

See below for the remaining answers to your questions re: OH-007 RD:

The approximate amount of funding remaining in the RH4 RD budget, if any, as of the date when DEP discontinued that RD, as stated above; and

DEP completed the acquisition of the head end site on October 31, 2018 and ceased the RH4 Park site design on November 1, 2018. As of that date DEP had completed the 90% design for RH4 CP1, the 60% design for RH4 CP2, and was in progress between 30% and 60% design for RH-4 CP3. A total of approximately \$8,710,000 of the \$18,281,590 RH4 design budget was utilized leaving approximately \$9,570,000 unused.

How any such remaining funds were thereafter re-allocated, re-distributed or otherwise treated.

Approximately \$1,596,000 of the remaining funds were applied to the tunnel alternative (\$463k), in-canal support (\$798k), third party geotech reviews for CP2 (\$15k), update to Envision v 3.0 and additional support for the stormwater pilot (\$320k). The balance, or roughly \$8 million, was

descope during discussions with EPA over the tunnel alternative
until the separate procurement for OH-007 was re-started.

Regards,

Christopher Gene King
Senior Counsel, Environmental Law
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From: Carr, Brian [Carr.Brian@epa.gov]
Sent: Thursday, July 22, 2021 2:04 PM
To: King, Christopher (Law)
Subject: Re: OH-007 RD

Chris,

Thank you - receipt acknowledged.

Brian E. Carr

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From: King, Christopher (Law) <CKing@law.nyc.gov>
Sent: Wednesday, July 21, 2021 4:54 PM
To: Carr, Brian <Carr.Brian@epa.gov>
Subject: RE: OH-007 RD

Hi Brian:

As per your request, below are responses to certain of your information requests with respect the OH-007 design and DEP's monthly reports. We are continuing to review our records and will update these responses as appropriate.

Regards,

CK

The approximate value of the OH-007 RD budget that was de-scoped and transferred to the RH4 RD:

The original budget included designs for RH-034 head end site and OH-007 tanks. The value of the de-scoped design, procurement, construction support, and closeout of the OH-007 tank portion of the contract – approximately \$21,850,000; the City then added a scope and budget for the RH-034 Tank design at the park site – approximately \$18,280,000.

The approximate value of the OH-007 RD budget retained for the activities that were not de-scoped:

From the original design contract for the OH-007 tank, the City retained the following:

- Preliminary geotechnical program at OH-007: approximately \$200,000
- Facility Planning and Final Draft BODR for the OH-007 tank: approximately \$1.5M
- Combined CEQR for both RH-034 sites and the OH-007 tank site, including ULURP: approximately \$800,000.

All of this work is in progress or has been completed.

The date when DEP initiated the OH-007 RD change order process:

The Consent Order regarding the RH-034 tank designs was finalized in June 2016, requiring two separate designs for a tank at the head end and at the park sites. As a result of this additional design requirement, discussions began with the ACCO in July 2016 for the change order. The change order was registered in August 2017.

The names/titles of the DEP personnel who initiated, approved, concurred on, or otherwise participated in processing that change order:

Acting Commissioner Vincent Sapienza, (and also in previous role as BEDC DC)
Acting BEDC DC James Mueller
CFO Joseph Murin
ACCO Elisa Velazquez
BEDC PM Kevin Clarke
BEDC AM Lindsay Degueldre
Acting Director, Contract Support BEDC Stephanie Chao
Contract Support BEDC, Nilam Shah
Office of Engineering Audits Ayman Maleh

Could you please indicate whether anyone other than the DEP project coordinator participates in the review and approval of the contents of DEP's monthly progress reports?

Preparation and review of these reports includes myself, Daniel Mulvihill of DEP BLA, April Weeks of DEP BEDC, Kevin Clarke of DEP BEDC, and (depending on individual report content) staff from DDC (updates on 1st Street TB and HLSS construction).

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From: Carr, Brian [<mailto:Carr.Brian@epa.gov>]
Sent: Wednesday, July 07, 2021 3:20 PM
To: King, Christopher (Law)
Subject: Re: OH-007 RD

Chris,

Thanks for your email regarding an extension request.

As a courtesy, your extension request is granted as to the questions related to the RH 4 (Park) RD for RH-034 tank, the final questions in EPA's April 7, 2021 email below.

As noted in EPA's email of July 2, 2021, also below, EPA has been seeking information to assess the City's compliance/noncompliance status since October 2019. The remainder of the information requested will be considered by EPA in relation to the work under the various orders that is being implemented.

Although the Law Department's system may have been compromised, there has been nothing that would indicate that DEP is not separately in full possession of the information needed to respond to these questions from April 7, 2021:

Could you please provide the following:

The approximate value of the OH-007 RD budget that was de-scoped and transferred to the RH4 RD; and

The approximate value of the OH-007 RD budget retained for the activities that were not de-scoped.

The date when DEP initiated the OH-007 RD change order process; and

The names/titles of the DEP personnel who initiated, approved, concurred on, or otherwise participated in processing that change order.

Could you please indicate whether anyone other than the DEP project coordinator participates in the review and approval of the contents of DEP's monthly progress reports?

Three and a half months, from April 7 to July 21, 2021, should be an adequate time to answer those narrow questions, which would appear to require a limited number of documents on which to base a reply. In addition, EPA's request did not seek any of supporting documents.

A request for an extension is therefore not granted as to the City's responses to the indented questions listed above.

EPA's March 29, 2021 CSO RA UAO outlines certain noncompliance by the City. The City's level of cooperation in returning to a status of compliance is a potential factor in that process.

Please let me know if you have any questions.

Brian E. Carr

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From: King, Christopher (Law) <CKing@law.nyc.gov>

Sent: Wednesday, July 7, 2021 2:20 PM

To: Carr, Brian <Carr.Brian@epa.gov>

Subject: RE: OH-007 RD

Hi Brian:

I am well thank you. As you may have heard, the Law Department's computer network was recently compromised and the agency was without any access to its email and computer network for an extended period of time. This situation has seriously impacted our effort to review files and prepare thorough responses to your information requests. As a result, we will not be able to submit responses by July 21st. We ask that we be given an additional 30 days to respond to your request - til August 21, 2021. I will let you know before then if we expect further delays.

Thanks for your patience and consideration.

Regards,

CK

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From: Carr, Brian [<mailto:Carr.Brian@epa.gov>]
Sent: Friday, July 02, 2021 10:42 AM
To: King, Christopher (Law)
Subject: Re: OH-007 RD

Chris,

I hope you are well.

I am following up on this supplemental information request from April 7, 2021, included below, which relates back to compliance-related information sought by EPA from the City in October 2019 and December 2020.

Your last status report to me regarding the April 7, 2021 request indicated that the City had compiled documents to provide a comprehensive response.

The submission of the City's response is requested by July 21, 2021.

Please let me know if you have any questions.

Have a good Fourth of July weekend.

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From: King, Christopher (Law) <CKing@law.nyc.gov>

Sent: Thursday, April 8, 2021 12:25 PM

To: Carr, Brian <Carr.Brian@epa.gov>

Subject: RE: OH-007 RD

Hi Brian:

We will discuss w/ DEP and get back to you asap.

CK

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From: Carr, Brian [<mailto:Carr.Brian@epa.gov>]

Sent: Wednesday, April 07, 2021 3:12 PM

To: King, Christopher (Law)

Subject: OH-007 RD

Chris,

I hope you are well.

This email is following up on the City's December 16, 2020 email response, attached, and seeks clarifying information regarding DEP's design efforts for the OH-007 tank.

The December response indicated:

I have conferred with DEP, and the change order that accomplished this was registered in August 2017. However, it is important to note that the change order did not de-scope all work on the OH-007 design from the original design contract. This work included environmental review, ULURP, and drafting the Basis of Design Report, none of which depended on the "de-scoped" elements.

Could you please provide the following:

The approximate value of the OH-007 RD budget that was de-scoped and transferred to the RH4 RD; and

The approximate value of the OH-007 RD budget retained for the activities that were not de-scoped.

The December response indicated that the contract was registered in August 2017. DEP has noted on various occasions that its contract processing is a lengthy one. Can you please provide the following:

The date when DEP initiated the OH-007 RD change order process; and

The names/titles of the DEP personnel who initiated, approved, concurred on, or otherwise participated in processing that change order.

The December response indicates that "DEP's work on the OH-007 design is also reflected in DEP's monthly progress reports" and references certain DEP monthly progress reports, which are submitted to EPA by DEP's project coordinator and copied to several other City personnel.

Could you please indicate whether anyone other than the DEP project coordinator participates in the review and approval of the contents of DEP's monthly progress reports?

Various correspondence between EPA and DEP reflected a differing understanding of the progress on the OH-007 RD during the tunnel proposal evaluation. The DEP Commissioner's email of May 16, 2019 regarding the OH-007 RD stated:

However, I strongly believe that a decision on the tunnel should be made before even more public money is spent toward a second major asset that may never be constructed.

Regional Administrator Lopez's letter of November 26, 2019 indicated:

Earlier in the process of discussing the potential merits of the tunnel proposal, I was given the impression that the City's work on both tanks was fully proceeding in parallel with efforts related to the tunnel concept. I have come to understand that little progress

has been made with regard to the OH-007 tank during the intervening months while the tunnel proposal was under consideration. I ask you to move forward with this work without further delay.

In support of the tunnel proposal, DEP made various submissions and presentations to EPA regarding CERCLA equivalency and the potential non-CERCLA infrastructure benefits of the tunnel (e.g., replacing aging infrastructure, increasing drainage control, increasing WWTP capacity, preventing sewer backups, and supporting resiliency). See, e.g., the October 1, 2018 letter from the Deputy Commissioner, and Attachment 1, Response to EPA Questions.

On September 10, 2018, DEP gave a presentation to EPA entitled "Gowanus Tunnel EPA Meeting 10Sept2018.pptx." Could you please identify the author(s) of the Notes on Slide 2 of that presentation?

DEP's October 2018 monthly progress report, dated November 16, 2018, indicates:

On October 31, 2018, the City acquired the two parcels at 242 Nevins Street and 234 Butler Street (the Canal-side Property), as well as a leasehold at 270 Nevins Street. In light of the City's acquisitions of the Canal-side Property, DEP has discontinued the Remedial Design for the RH4 Park Property in accordance with Paragraph 44(c).

Can you please provide the following:

The approximate amount of funding remaining in the RH4 RD budget, if any, as of the date when DEP discontinued that RD, as stated above; and

How any such remaining funds were thereafter re-allocated, re-distributed or otherwise treated.

EPA is not requesting any documents at present, only responses to these questions. Please let me know if you have any questions.

Thank you for your cooperation.

Brian E. Carr

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